



September 27, 2001

Mr. H. Louis Nichols  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201

OR2001-4344

Dear Mr. Nichols:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152459.

The City of Hutchins Police Department (the “department”), which you represent, received a request for crime statistics, sex offender information, an offense report, and telephone call recordings from June 15, 2001, through July 16, 2001. You indicate that you have released the requested crime statistics and sex offender information. However, you contend that it is infeasible for the city to respond to the request for telephone call recordings, which you interpret as a request for 9-1-1 recordings. Furthermore, you claim that the remainder of the requested information is excepted from disclosure under section 552.108 of the Government Code, section 58.007 of the Family Code, and common law privacy. We have considered your arguments and reviewed the submitted information.

We begin by noting that some of the submitted information is subject to the Medical Practice Act (“the MPA”). Section 159.002 of the MPA provides:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). We have further found that when a file is created as the result of a hospital stay, all the documents in the file relating to diagnosis and treatment constitute physician-patient communications or "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." Open Records Decision No. 546 (1990).

The medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We find that a portion of the submitted information constitutes "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." We have marked this information that is subject to the MPA and may be released only in accordance therewith.

The remainder of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Because the submitted documents relate to an allegation of child abuse, the documents are within the scope of section 261.201 of the Family Code. You have not indicated that the city has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the submitted documents that are not otherwise subject to the MPA are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the city must withhold these documents from disclosure under section 552.101 of the Government Code as information made confidential by law.<sup>1</sup> Furthermore, because section 261.201(a) protects all "files, reports, communications, and working papers" related to an investigation of child abuse, the city must not release front page offense report information in cases of alleged child abuse.

Next, we address whether the requested 9-1-1 recordings may be withheld from the requestor. You contend that it is infeasible to respond to the request for 9-1-1 recordings. In responding to a request for information, the governmental body must make a good-faith effort to relate the request to the information that it holds or to which it has access. *See* Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). If what information is requested is unclear, the governmental body may ask the requestor to clarify the request. *See* Gov't Code § 552.222(b). Furthermore, if a large amount of information is requested, the governmental body may discuss with the requestor how the scope of a request might be narrowed, but in doing so may not inquire into the purpose for which the information will be used. *Id.*

Once a governmental body receives a request for information, the Public Information Act requires the governmental body to promptly produce requested information for inspection, duplication, or both. *See* Gov't Code § 552.221; Open Records Decision No. 664 (2000). In other words, a governmental body must release the information as soon as reasonably possible and without delay. ORD 664 at 2. What constitutes a reasonable amount of time will depend on the circumstances of each case, including the volume of information requested. *Id.* at 4-5. However, the size of the request and the amount of time and money it will take for a governmental body to respond to a request are not sufficient reasons for failing to produce responsive information. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 686-87 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

---

<sup>1</sup>We note, however, that if the Texas Department of Regulatory Services has created a file on this alleged abuse, the child's parent(s) may have the statutory right to review that file. *See* Fam. Code § 261.201(g).

To the extent the city interprets the request for telephone call recordings to encompass those 9-1-1 calls relating to the case of child abuse, we find that the city must withhold the recordings under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, to the extent city interprets the request to encompass calls other than those related to the child abuse case, the city must release the recordings to the requestor promptly. *See* Gov't Code §§ 552.221, .301, .302.

In summary, we have marked some of the submitted documents that are subject to the MPA and may be released only in accordance with that statute. The remainder of the submitted information as well as any responsive 9-1-1 calls relating to the child abuse case are confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code. However, to the extent the city interprets the request to encompass telephone calls other than those related to the child abuse case, the city must release the other calls pursuant to section 552.302 of the Government Code. Based on our findings, we need not reach your claimed exceptions.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

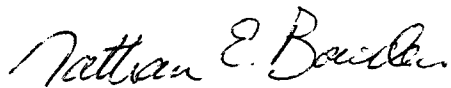
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/sdk

Ref: ID# 152459

Enc: Submitted documents

c: Ms. Mary Ross  
129 Crockett Street  
Hutchins, Texas 75141  
(w/o enclosures)